

## **ORDINANCE 03-24**

### **AN ORDINANCE PROVIDING FOR THE PAYMENT OF AVAILABILITY AND CONNECTION COSTS FOR DEVELOPERS AND NEW USERS OF THE TOWN OF WESTFIELD WATER WORKS**

**WHEREAS**, the Town of Westfield, Indiana (“hereinafter referred to as the “Town”), operates water facilities for the production and distribution of potable water from property within Hamilton County and desires to extend service from time to time to persons and entities needful thereof; and,

**WHEREAS**, the Town operates a Municipal Water Works pursuant to Indiana Code and such Works is subject to regulation by the Indiana Department of Environmental Management; and,

**WHEREAS**, there is presently in full force and effect Ordinance 96-14 which established contribution requirements for the developers and new users of the Westfield Water Works; and,

**WHEREAS**, the financial advisor for the Town has caused numerous studies to be undertaken concerning the costs of the operation and expansion of the Water Works; and,

**WHEREAS**, Ordinance 96-14 created availability and connection funds to provide for the future expansion of the Town’s treatment plants and distribution system; and,

**WHEREAS**, the availability and connection funds have, been pledged to the holders of certain of the Town’s Waterworks Revenue Bonds; and,

**WHEREAS**, it is reasonable that new users to the utility pay a fair and reasonable cost to partially reimburse the Town for the cost of creating, maintaining, and expanding the capacity for the treatment and distribution of potable water within and around the Town.

**WHEREAS**, such extension of services to the extent economically feasible will have a long range effect of benefiting all users of the municipal water system by maintaining lower rates through more usage; and,

**WHEREAS**, in order to pay the prior costs of the expansion of the water system within the Town; to provide for future expansion of the distribution; and to continue to provide for the expansion of the Town’s treatment plants, the Town should establish fair and equitable fees to be paid by new users and fix initial equivalent user tables and connection costs for developed and undeveloped acreage desiring water service from the Town of Westfield, Indiana.

NOW, THEREFORE, BE IT ORDAINED, by the Town Council of the Town of Westfield, Indiana:

1. No connection to any town-owned water main shall be allowed until a permit is obtained and payment or satisfactory surety for payment as a contribution to aid in construction has been made into the Town of Westfield Availability Fund pursuant to this Ordinance.
2. No water system facilities will be extended by the Town unless and until such area requesting extension is annexed to the Town or the owners of the real estate within the area have agreed not to remonstrate against such annexation in the future (except City of Noblesville Annexed Areas); and,
3. There are hereby established as of the effective date of this Ordinance availability for all new users of the Town Water Works availability fees of One Thousand Five Hundred and Thirty Dollars (\$1530) per Equivalent Dwelling Unit (EDU) and connection fees of Five Hundred Dollars (\$500) per Equivalent Dwelling Unit (EDU). For purposes of this Ordinance, one EDU shall be defined as the average use of 310 gallons of water flow per day over one calendar year. The assigned number of EDU's for various land users shall be determined by the use of **Table 11-1 of 327 IAC 3-6-11** as applicable, unless the Town Council of the Town of Westfield determines to the contrary.
4. Manner of Payment. Payment of the availability and connection costs shall be made at the following times and in the following manner:
  - a. At detail plan approval, or conditional use approval and before any utility construction commences the availability fees of One Thousand Five Hundred and Thirty Dollars \$1530.00 per each equivalent dwelling unit shall be paid. Said payment shall be paid into the following accounts of the Availability Fee Fund.
    - i. Availability Fee Master Account. One Thousand Two Hundred and Eighty Dollars (\$1280) shall be paid into the Availability Fee Master Account.
    - ii. Availability Fee Reimbursement Account. Two Hundred and Fifty Dollars (\$250) shall be paid into the Availability Fee Reimbursement Account. This account shall be used to provide reimbursements to developers who oversize and/or extend water mains pursuant to the Master Plan set out in paragraph 8 below. Contracts under this account shall be negotiated by the Town Public Works Director and approved

by the Westfield Town Council. Any developer meeting the terms of paragraph 8 below, shall receive as a credit, up to Two Hundred and Fifty Dollars (\$250) per EDU on land developed or owned by the developer as a credit for payment to the Availability Fee Reimbursement Account. The balance of credits shall be paid in cash as set out in paragraph 8 below. The payments under this account shall be made only from funds available and shall be paid to the developer in order of approval of the Reimbursement Agreements approved by the Westfield Town Council. Specifically, prioritized reimbursement cash payments will only be paid when the full amount of reimbursement is available in the account to be paid. The Director of Public Works shall approve all cash payments from this account.

- b. At the issuance of the water permit, Five Hundred Dollars (\$500) per equivalent dwelling unit (EDU) shall be paid. Said payment shall be placed entirely into the Water Tap Fee Fund.
  - c. All availability and connection costs shall be due and payable upon application for a sewer permit for any new user if the lot or land of the new user was not assessed an initial connection fee under either Section (4)(a) above, or a prior ordinance of the Town.
  - d. Funds contained in or contributed to the Availability Fee Fund, and the rights of developers to such funds, are expressly subject and subordinate to the pledge of such funds, as it may be continued from time to time, to the holders of the Town's Waterworks Revenue Bonds. The Town shall take no actions under this Ordinance 03-24 in conflict with such pledge or the rights of the holders of such Revenue Bonds.
5. All interest from the Availability Fee Fund and Water Tap Fee Fund shall remain in the funds and used for the purposes set out herein, subject, however, to the pledge of such funds to the holders of the Town's Waterworks Revenue Bonds.
6. The costs to be paid from the above funds shall be as follows, but not limited to, construction costs, legal costs, engineering costs, construction inspection costs, project administrative costs and easement acquisition costs, subject, however, to the pledge of such funds to the holders of the Town's Waterworks Revenue Bonds. All costs shall be administered, defined, and approved by the Westfield Town Council.

7. All easements required by a development shall be prepared and dedicated to the Town of Westfield at the cost of the developer. Other easements may be acquired pursuant to law.
8. Credits and Reimbursements. Any owner of real estate, which either (a) including an extension of an water main defined in the Town Water Master Plan (hereinafter referred to as “the Master Plan”); or (b) is served, or should be served, by a water main to provide extensions of the Town water system to other real estate; shall be required to extend the mains through their property, under the terms and conditions set out in this paragraph. For the purposes of this paragraph, the following definitions apply:
  - a. Off-Site Main Costs- Water main costs external to a development including the costs of oversizing, or extending a water main through a development which costs would not be incurred if the water main was only being constructed or extended to serve present development.
  - b. On-Site Main Costs- Water costs incurred because of the development being served.
  - c. Oversizing Costs- Shall be the difference between the off-site main costs and the on-site main costs, including oversizing, construction of booster station, and other costs which would not be necessary, but for the developer’s project, but are only costs of construction constructed in order to benefit real estate off site of property owned by persons other than the developer.
9. The developer may recover his oversizing costs by entering into an Agreement for Off-Site Extensions of Water Mains and Related Facilities in a form substantially similar to **Exhibit A** which is attached hereto (hereinafter referred to as “the Reimbursement Agreement”). The Reimbursement Agreement shall be negotiated by the Director of Public Works and approved by the Westfield Town Council. The amount of oversizing costs due the developer shall be paid through credits and reimbursements as set out herein, subject, however, to the pledge of funds of the Town’s Waterworks to the holders of the Town’s Waterworks Revenue Bonds. The developer, or his designee, shall receive credits for his liability to the Availability Fee Reimbursement Account of the Availability Fee Fund as set out in paragraph 4(a)(ii) at the rate of Two Hundred and Fifty Dollars (\$250) per EDU. To the extent that the credits would not be sufficient to reimburse the developer for his oversizing costs, which may include up to ten percent (10%) of the design cost of the oversized sewer, the developer shall be entitled to reimbursement of said costs without interest. Those funds shall be paid solely from the Availability Fee Reimbursement Account set out herein and shall be paid to the developer from the funds in that account based on availability and

prioritized based upon the dates which the developer's Reimbursement Agreement is approved by the Westfield Town Council.

10. Extension of off-site mains shall be, in accordance with the latest Master Plan, developed and approved by the Town of Westfield, and off-site main designed by registered professional and state licensed engineers retained or approved by said Town of Westfield. Plans specifications for specific off-site mains, shall be submitted to, and receive approval from the said Town of Westfield and all applicable regulatory agencies prior to actual start of construction ( a copy of all such approvals shall be filed with the Town of Westfield within ten days after receipt of approval). In no event will any of the Town water revenues be used, committed or encumbered to repay any such funds advanced or contributed, nor will the Town's General Fund be used, committed, or encumbered to repay any such funds advanced or contributed other than expressly agreed pursuant to paragraph 8 and will be repaid only from funds deposited in the Availability Fee Reimbursement Account of the Availability Fee Fund. No provision of this Ordinance shall be construed as a guarantee by the Town of Westfield that the owners of real estate advancing funds will be fully reimbursed therefore. The amount of credits and reimbursements will be based on construction costs for labor and materials only and will be based on Town standard costs as updated annually from receipt of no less than two (2) bid quotations.
11. The connection fees paid at the time of water permit issuance shall be strictly non-refundable.
12. All plans for water mains and appurtenances thereto, to be installed outside the area being developed by the applicant (i.e. off-site water mains) shall be designed and prepared by certified professional engineers, reviewed and approved by the Westfield Public Works Department prior to the project being released for construction. All easements shall be made out to the Town of Westfield, and shall be obtained by and, if necessary, paid for by the owners of real estate, and shall be obtained prior to engineering design of the project. Easements shall be in a form approved by the Town. The owners of real estate applying for water service shall deposit, with the Town of Westfield, adequate funds to pay for appurtenant non-construction costs prior to the Town proceeding with preparation of plans and specifications. If the project does not proceed to completion after project costs are established, monies so deposited by the owners of real estate shall be non-refundable and will be used to pay incurred expenses. If funds are in excess of expenses, the excess will be returned to the owners of real estate making the deposit or their successors. If the project progresses to completion, the deposit will be credited to the total project cost.
13. All extensions to the Town of Westfield water system shall be dedicated to and must be accepted by the Town before connection, and once connected,

shall become and remain, thereafter the sole property of the Town of Westfield without further dedication thereof. The owners of real estate making such dedication shall post at the time of dedication, three years maintenance equal to fifteen percent (15%) of the project cost in a form acceptable to the Town. Owners of real estate shall agree and furnish affidavit that they have paid in full contractor or contractors, material, men, and laborers in cash the full cost of said extension and extensions.

14. The owners of real estate obtaining a permit of water extensions shall submit plans for on-site water mains, including water mains to be constructed within the development, to the Town of Westfield for review and approval prior to start of construction. During construction of said on-site water mains, the owners of real estate shall pay the expense of an inspector to assure that the construction of the facilities are in compliance with current standards and specifications established by the Town of Westfield. Upon completion of construction, prior to the acceptance of maintenance bonds or acceptance of the infrastructure by the Town, the owners of real estate shall provide certified record construction drawings. These record drawings shall be required to adhere to the latest version of the Utility and Infrastructure Construction Standards Manual. If certified record construction drawings are not provided, as above required, the Town may prepare these at the expense of said owners of real estate. No potential reimbursable expenses of oversizing and/or water main construction will be allowed until record drawings are provided and approved. The Town will provide the inspector or may approve, in writing, an inspector designated by the owners of real estate. The owners of real estate will pay the inspection costs, prior to the approval of the maintenance bond, to be deposited into the Construction Inspection Services Account. The inspection costs shall be based on costs and rates approved by the Westfield Town Council.
15. Individual Connections in Developed Areas. If individual applicants for water service in already-developed acreage and/or platted subdivisions wish to be served requiring construction of a new water main, they shall obtain a permit and deposit adequate funds, with the Town, to pay engineering and appurtenant costs prior to authorization of such design by the Town and receipt of bids for construction. If the project does not proceed to completion after project costs are established, the money so deposited by individual applicants shall be non-refundable and will be used to pay incurred expenses. If monies are in excess of expenses, said excess will be returned to the individual making the deposit. If the project is completed, the deposits of individual applicants shall be credited to said individuals' costs as may be agreed to in a mutually binding agreement with the Town and individual. If a connection is made to any water main without obtaining a permit and paying the required Availability, Connection, and Local Water Main Costs, such act shall constitute a violation of this Ordinance, and the individual or owners of real estate making such connection will be subject to a fine of One Hundred

Dollars (\$100) per day for each day the connection was unlawfully installed, and will be required to remove the connection until the requirements of the Ordinance are complied with. Each day such unlawful connection exists may be considered a separated offense.

16. This Ordinance and the costs and charges set out herein may be amended from time to time by the Common Council of the Town of Westfield when conditions exist that indicate to the Common Council that charges herein are not equitable for the customers of the municipal water system or for the subdividers, developers, or owners of property connection to such water system.
17. Nothing contained in this Ordinance 03-24 shall be construed to give to any party any rights to the funds or revenues of the Waterworks superior to or in conflict with the rights of the holders of the Town's Waterworks Revenue Bonds or to limit the rights of the Town to pledge or encumber such funds or to revenues for the benefit of future holders of such bonds.

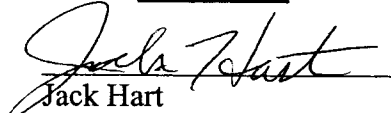
18. This Ordinance shall be in full force and effect and applicable to fees due and payable on November 1, 2003 and thereafter.

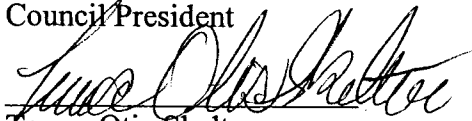
ADOPTED THIS 13 DAY OF Oct, 2003 BY THE

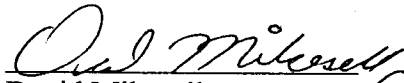
WESTFIELD TOWN COUNCIL

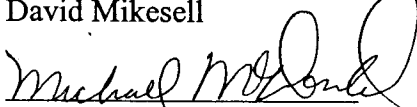
### WESTFIELD TOWN COUNCIL

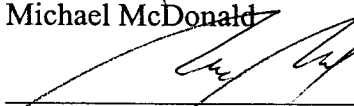
#### Voting For

  
Jack Hart  
Council President

  
Teresa Otis-Skelton

  
David Mikesell

  
Michael McDonald

  
Mic Mead

#### Voting Against

\_\_\_\_\_  
Jack Hart  
Council President

\_\_\_\_\_  
Teresa Otis-Skelton

\_\_\_\_\_  
David Mikesell

\_\_\_\_\_  
Michael McDonald

\_\_\_\_\_  
Mic Mead

#### Abstain

\_\_\_\_\_  
Jack Hart  
Council President


\_\_\_\_\_  
Teresa Otis-Skelton

\_\_\_\_\_  
David Mikesell

\_\_\_\_\_  
Michael McDonald

\_\_\_\_\_  
Mic Mead

ATTEST:

  
Clerk-Treasurer, Cindy Gossard

This ordinance prepared by  
Jerry Rosenberger, Town Manager



## EXHIBIT A

### AGREEMENT NO. WATER (DRAFT SAMPLE AGREEMENT) AGREEMENT FOR OFF-SITE EXTENSION OF WATER MAINS AND RELATED FACILITIES

This agreement for off-site extension of water mains and facilities executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Town of Westfield acting by and through its Common Council, (hereinafter referred to as the "Town") and (Town to Insert Developer Name) (hereinafter referred to as the "Owner/Developer"):

#### WITNESSETH:

WHEREAS, the Town has developed a Comprehensive Master Plan for the development and distribution of the water mains and facilities (hereinafter referred to as the "Master Plan"); and,

WHEREAS, the Owner/Developer desires to cause development to occur within the jurisdiction of the Town and to provide water service to such development, (hereinafter referred to as the "Project"); and,

WHEREAS, a portion of the water mains and facilities to be constructed to serve said development in conformance with the Master Plan were "off-site" as said term is understood within the context of the Master Plan and is further defined within the terms of this Agreement.

WHEREAS, it is fair and equitable, to enter into an agreement, to reimburse the Owner/Developer for the part of the costs of the Project, which are not necessary for water service to the Owner/Developer's development.

NOW, THEREFORE, the parties do hereby agree in consideration of the promises and covenants contained herein as follows:

#### 1. Construction of off-site extension of water mains and facilities

##### a. Plans and Specifications

The Owner/Developer, at its expense, has caused plans and specifications to be prepared consistent with the Master Plan for the extension of water mains and facilities to the site of its development which is described in **Exhibit A** attached hereto and made a part hereof.

The Plans have been submitted to the Town for approval and said plans are a part of this Agreement and shall be marked **Exhibit B**.

b. Construction

The Owner/Developer will construct the water mains and facilities in substantial conformance to the plans and specifications.

c. Performance Bond, Maintenance Bond and Testing

Upon completion of the Project, the Owner/Developer shall post a maintenance bond or surety acceptable to the Town, in an amount sufficient to indemnify the Town for the maintenance of the Project for a three (3) year period beginning the date of the Project is accepted by the Westfield Town Council. Prior to acceptance of the Project, the Project shall pass one or more normally acceptable inspection tests, including but not limited to, a pressure test or leak test, and bacteriological testing. The Town shall not be obligated to accept the dedication of the Project unless the Project meets normally acceptable standards for the above tests.

d. Dedication and Acceptance Thereof

Upon completion of the Project and satisfactory performance of all testing required by the Town, the Owner/Developer shall convey all right, title, and interest in the Project to the Town. The Town shall accept such dedication upon satisfactory testing and posting of a maintenance bond or other acceptable surety as set out herein.

2. Reimbursement and/or Credits

The Town agrees that the Owner/Developer shall be entitled to reimbursement/credit for construction of the Project in the total amount of (Town to Insert Total Amount of Reimbursement/Credit Due Developer) as detailed in **Exhibit C** attached hereto and made a part hereof. The reimbursement/credit specifically set out herein shall represent the total compensation to the Owner/Developer arising out of the Project. A cost estimate of the Project and related costs are detailed in **Exhibit D** and **Exhibit E**, attached hereto and made a part hereof. Developer acknowledges that such reimbursement/ credit is subject and subordinate to the obligations of the Town to the holders of the Town's Waterworks Revenue Bonds in accordance with the provisions of Ordinance 03-\_\_\_\_.

3. Amendments and Modifications

This Agreement incorporates the entire agreement of the parties, and no extrinsic matters shall be deemed to have amended this Agreement in any manner, unless specifically set forth in writing and executed by the parties hereto as an addendum or amendment to this Agreement.

4. Default

Any failure on the part of either party to carry out the terms or conditions set forth herein shall be considered an event of default and shall relieve the other party from any further obligation under the terms of this Agreement.

5. No Waiver of Obligation to Pay Charges

The parties agree that there is nothing about this Agreement which may be in any manner construed to relieve the Owner/Developer from any obligation currently imposed upon such Owner/Developer by reason of the ordinances of the Town of Westfield and in particular the ordinances requiring the payment of availability and connection charges to the Town. In addition, the parties agree that no proprietary interest arises out of this Agreement which would result in the Owner/Developer being entitled to avoid any increase in availability connection ordinances.

6. Execution of Supplemental Documents

The parties agree that they shall execute any and all documents necessary to give effect to this Agreement, including, but not limited to, the assignment or granting of easements, or the execution of such other documents as may be necessary.

By: (Town to Insert Developer  
Company Name)

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(Town to Insert Name of Officer  
Signing)

SIGN OF INDIANA                    )  
  )SS:  
COUNTY OF HAMILTON )

Personally appeared before me, a notary public in and for said County and State,  
(Town to Insert Signer's Name and Company Name), who, being first duly sworn,  
acknowledges that the representations contained herein are true to the best of his  
knowledge.

WITNESS MY HAND AND SEAL, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

MY COMMISSION EXPIRES:

\_\_\_\_\_

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and  
seals, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

WESTFIELD TOWN COUNCIL

AYE

NAY

_____	Jack Hart Council President	_____
_____	Mike McDonald	_____
_____	Mic Mead	_____
_____	David Mikesell	_____
_____	Teresa Otis Skelton	_____

ATTEST:

\_\_\_\_\_

Cindy Gossard, Clerk-Treasurer  
Town of Westfield

EXHIBIT A

**(Insert Project Name)**

**(Insert Legal Description as Listed on Plans)**

## EXHIBIT B

Because of reproduction difficulties and its bulk nature, the plans are on file in the Clerk-Treasurer's Office and the Westfield Public Works Department and are duly marked Exhibit B.

**(Developer to supply three (3) original copies of the project plans with changes required by the Water Master Plan Highlighted.)**

**EXHIBIT C**

**(Insert Project Name)**

**(Insert Developer Name)**

**Credit Due Developer    (Insert # of lots @ \$250/lot)                      \$(Insert Amount)**

**Reimbursement Due Developer    \$(Insert Amount)**

**Total Compensation Due for Agreement No. Water SAMPLE    \$(Insert Total)**

**(Reimbursement cash payments shall be paid only when the full amount for reimbursement is available in the reimbursement account and based on prioritization (first in first out) of the agreement.)**

**EXHIBIT D**

**(Insert Cost Estimate of Project, see attached example) \*\*SUPPLY THREE (3)  
ORIGINALS**



## EXHIBIT E

**(Insert letter from Engineering Firm certifying the amount of design costs for the water main and requesting that 10% of this cost be reimbursed by this agreement)\*\***

**SUPPLY THREE (3) ORIGINALS**

### EXAMPLE

Please be advised that the cost to prepare the engineering drawings for the water mains delineated on the cost summary prepared by **(Insert Contractor's Name)** dated **(Insert Cost Summary Date)** is **(Insert Engineering Cost)**.

We hereby request that the required documentation be completed so that **\$(Insert 10% of Above Cost)** (which represents 10% of the above engineering costs) be credited to **(Insert Developer's Name)**.